

## CUMULATIVE DIGEST

### CH. 4 ARSON

#### §4

**People v. Stewart**, 406 Ill.App.3d 518, 940 N.E.2d 273 (1st Dist. 2010)

The defendant was convicted of arson of a building at 5405 South Shields and aggravated arson of a building at 5354 South Princeton. The State's evidence was that defendant set fire to the 5405 building and that the fire spread to the 5354 building. The court reversed defendant's arson conviction, but affirmed his conviction for aggravated arson.

1. A person commits arson when he knowingly, by means of fire or explosive, damages any real or personal property of another, having a value of \$150 or more, without his consent. 720 ILCS 5/20-1(a). Property "of another" means a building or other property, whether real or personal, in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may also have an interest in the building. 720 ILCS 5/20-1. While it is not necessary to prove the identity of the owner or possessor of the property, the proof must establish that the property is one in which someone other than the defendant has an interest that the defendant has no authority to impair.

The State charged that defendant committed arson of 5405 South Shields, the property of Willie Jones. It offered into evidence the death certificate of Willie Jones, which listed 5405 South Shields as his address. At most this established that Jones had an interest in the property eight months before the fire, not that he had an interest in the property at the time of the fire. The State also admitted evidence that during that eight-month period following Jones' death, the property was either vacant or occupied by squatters. This also failed to establish that anyone had an interest in the property. The court rejected the State's argument that the death certificate supported the inference that Jones' estate owned the property at the time of the fire, or that it was the property of the State if Jones had no heirs. There was no evidence that Jones had any ownership interest in the property that could have gone to his estate or escheated to the State. The State had attempted to elicit from a detective the name of the property owner as reflected in the county assessor's taxpayer database, but an objection to this testimony was sustained on hearsay grounds, and the State offered no further evidence. The mere fact that defendant had no interest in the property did not satisfy the State's burden of showing that someone other than the defendant had an interest in the property.

2. The aggravated arson charge alleged that in that in the course of committing arson, defendant knowingly damaged a building at 5354 South Princeton, when he knew or reasonably should have known that one or more persons were present therein. 720 ILCS 5/20-1.1(a). One acts knowingly when he is consciously aware that the result of his conduct, described by the statute defining the offense, is practically certain to be caused by his conduct. 720 ILCS 5/4-5(b). Therefore, to convict defendant of aggravated arson, the State had to prove that defendant was consciously aware that it was practically certain that the building at 5354 South Princeton would be damaged by his conduct.

The defendant ignited a fire on the wooden, outdoor second-floor landing of a building located at 5405 South Shields that spread to the roof of the building at 5354 South Princeton. The building at 5354 South Princeton is no more than 300 feet from 5405 South Shields and

the area between the two building is comprised of an alley and vacant lots. The winds were blowing 27 mph to the north at the time that defendant set the fire.

The court held that this evidence was sufficient to support the inference that defendant acted with the requisite mental state. A natural consequence of fire is that it tends to spread. Given the weather conditions and the lack of other structures between the two buildings, a rational trier of fact could find that defendant knowingly set fire to the building at 5354 South Princeton.

3. Although a defendant may not generally be convicted of an offense for which he has not been charged, in some instances he may be entitled to an instruction on an uncharged lesser-included offense. A lesser-included offense is one that is established by proof of the same or less than all of the facts or a less culpable mental state (or both) than that which is required to establish the commission of the offense charged. 720 ILCS 5/2-9(a). Courts use a two-step charging-instrument approach to determine whether an offense is a lesser-included offense. First, courts look to the charging instrument to determine whether the description of the greater offense contains a broad foundation or main outline of the lesser offense. Once the lesser-included offense is identified, a court must examine the evidence presented at trial to determine whether the evidence rationally supports a conviction for the lesser-included offense. A defendant is entitled to an instruction on the lesser-included offense only if the trial evidence is such that a jury could rationally find defendant guilty of the lesser offense, yet acquit him of the greater.

Under the charging-instrument approach, criminal damage to property is a lesser-included offense of aggravated arson. Defendant was charged with aggravated arson “in that he, in the course of committing arson, knowingly damaged partially or totally the building or structure of Gregory Sloane, located at 5354 South Princeton, in Chicago, Illinois, and [defendant] knew or reasonably should have known that one of more persons were present therein.” The criminal damage to property statute provides in relevant part that the offense is committed when a person “recklessly by means of fire or explosive damages property of another.” 720 ILCS 5/21-1(1)(b). A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation. 720 ILCS 5/4-6.

Defendant was not entitled to an instruction on the lesser-included offense, however, because the jury could not rationally acquit defendant of aggravated arson and convict him of criminal damage to property. All of the actions of the defendant evidenced knowing and deliberate conduct. There was no evidence that the defendant accidentally caused the fire or that it accidentally spread to the 5354 building.

(Defendant was represented by Assistant Defender Sarah Curry, Chicago.)

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